

§ 20.2056(b)-9

26 CFR Ch. I (4-1-10 Edition)

as qualified terminable interest property is determined solely under section 2056(b)(7) and not under section 2056(b)(8). Accordingly, if the decedent died on or before October 24, 1992, or the trust otherwise comes within the purview of the transitional rules contained in § 20.2056(b)-7(e)(5), the spousal annuity or unitrust interest may qualify under § 20.2056(b)-7(e) as a qualifying income interest for life.

[T.D. 8522, 59 FR 9653, Mar. 1, 1994]

§ 20.2056(b)-9 Denial of double deduction.

The value of an interest in property may not be deducted for Federal estate tax purposes more than once with respect to the same decedent. For example, where a decedent transfers a life estate in a farm to the spouse with a remainder to charity, the entire property is, pursuant to the executor's election under section 2056(b)(7), treated as passing to the spouse. The entire value of the property qualifies for the marital deduction. No part of the value of the property qualifies for a charitable deduction under section 2055 in the decedent's estate.

[T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(b)-10 Effective dates.

Except as specifically provided in §§ 20.2056(b)-5(c)(3) (ii) and (iii), 20.2056(b)-7(d)(3), 20.2056(b)-7(e)(5), and 20.2056(b)-8(b), the provisions of §§ 20.2056(b)-5(c), 20.2056(b)-7, 20.2056(b)-8, and 20.2056(b)-9 are applicable with respect to estates of decedents dying after March 1, 1994. With respect to decedents dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. In addition, the rule in the last sentence of § 20.2056(b)-5(f)(1) and the rule in the last sentence of § 20.2056(b)-7(d)(1) regarding the effect on the spouse's right to income if applicable local law provides for the reasonable apportionment between the income and remainder beneficiaries of the total return of the trust are applicable with respect to trusts for taxable years ending after January 2, 2004.

[T.D. 8779, 63 FR 44393, Aug. 19, 1998, as amended by T.D. 9102, 69 FR 21, Jan. 2, 2004]

§ 20.2056(c)-1 Marital deduction; definition of "passed from the decedent."

(a) *In general.* The following rules are applicable in determining the person to whom any property interest "passed from the decedent":

(1) Property interests devolving upon any person (or persons) as surviving co-owner with the decedent under any form of joint ownership under which the right of survivorship existed are considered as having passed from the decedent to such person (or persons).

(2) Property interests at any time subject to the decedent's power to appoint (whether alone or in conjunction with any person) are considered as having passed from the decedent to the appointee under his exercise of the power, or, in case of the lapse, release or non-exercise of the power, as having passed from the decedent to the taker in default of exercise.

(3) The dower or curtesy interest (or statutory interest in lieu thereof) of the decedent's surviving spouse is considered as having passed from the decedent to his spouse.

(4) The proceeds of insurance upon the life of the decedent are considered as having passed from the decedent to the person who, at the time of the decedent's death, was entitled to receive the proceeds.

(5) Any property interest transferred during life, bequeathed or devised by the decedent, or inherited from the decedent, is considered as having passed to the person to whom he transferred, bequeathed, or devised the interest, or to the person who inherited the interest from him.

(6) The survivor's interest in an annuity or other payment described in section 2039 (see §§ 20.2039-1 and 20.2039-2) is considered as having passed from the decedent to the survivor only to the extent that the value of such interest is included in the decedent's gross estate under that section. If only a portion of the entire annuity or other payment is included in the decedent's gross estate and the annuity or other payment is payable to more than one beneficiary, then the value of the interest considered to have passed to each beneficiary is that portion of the amount payable to each beneficiary